

**IN THE UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:17-cv-00127-MR
[Criminal Case No. 1:16-cr-00051-MR-DLH-2]**

SAMUEL ZUNIGA MEDINA,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

ORDER

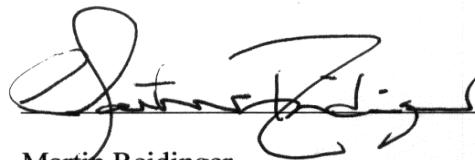
THIS MATTER is before the Court on the Petitioner’s Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [Doc. 1], which the Court received on May 15, 2017.

The Court entered a Judgment against the Petitioner in his underlying criminal action on May 4, 2017. [Criminal Case No. 1:16-cr-00051-MR-DLH-2 (“CR”), Doc. 125]. The Petitioner filed a Notice of Appeal to the Fourth Circuit of Appeals immediately after his sentencing. [CR Doc. 123]. Because the Petitioner’s direct appeal is currently pending in the Fourth Circuit, his motion to vacate is premature. The Court, therefore, will dismiss the motion to vacate without prejudice to the Petitioner refiling the motion after resolution of his direct appeal.

IT IS, THEREFORE, ORDERED that the Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [Doc. 1] is **DISMISSED WITHOUT PREJUDICE** as premature.

IT IS SO ORDERED.

Signed: May 29, 2017


Martin Reidinger
United States District Judge

